

Message Text

CONFIDENTIAL

PAGE 01 STATE 240807

53

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FM SECSTATE WASHDC

TO AMEMBASSY NEW DELHI IMMEDIATE

C O N F I D E N T I A L STATE 240807

E.O. 11652: GDS

TAGS: SHUM, MASS, IN

SUBJECT: CONGRESSIONAL REQUEST FOR HUMAN RIGHTS
INFORMATION

REF: STATE 231122

1. SENATOR HUMPHREY AS CHAIRMAN OF THE FOREIGN ASSISTANCE
SUBCOMMITTEE HAS ASKED THE DEPARTMENT TO PROVIDE THE
SUBCOMMITTEE STAFF BASIC HUMAN RIGHTS DATA AND INFORMATION
ON 17 COUNTRIES, INCLUDING INDIA, ON A CONFIDENTIAL BASIS
FOR THE STAFF'S USE IN PREPARING LEGISLATION. IN RESPONSE
TO THIS REQUEST, THE SECRETARY HAS AUTHORIZED US TO PRO-
VIDE THE SUBCOMMITTEE WITH THIS BASIC DATA AND INFORMATION
USING AS A BASIS THEREFOR UPDATED DRAFTS OF HUMAN RIGHTS
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 STATE 240807

OBSERVANCE REPORTS ON THE 17 COUNTRIES WHICH THE DEPARTMENT

HAS BEEN PREPARING FOR POSSIBLE SUBMISSION EARLY NEXT YEAR IN ACCORDANCE WITH SECTION 502B (B) OF THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED BY THE INTERNATIONAL SECURITY ASSISTANCE AND ARMS EXPORT CONTROL ACT OF 1976. (THE TEXT AND A DISCUSSION OF THE RELEVANT LEGISLATIVE PROVISIONS WERE TRANSMITTED BY REFTEL.) ALL INFORMATION WILL BE PROVIDED ON A CLASSIFIED BASIS, AS SENATOR HUMPHREY REQUESTED AND THE SECRETARY HAS DIRECTED, ALTHOUGH PUBLIC DISCLOSURE CANNOT BE PRECLUDED.

2. WE HAVE INFORMED THE SUBCOMMITTEE THAT THE REQUESTED INFORMATION IS BEING COLLECTED AND PREPARED FOR TURNOVER IN TWO WEEKS, I.E., OCTOBER 8. ACCORDINGLY, CORRECTIONS, UPDATING INFORMATION, COMMENTS AND EMBASSY CLEARANCE ON THE LATEST, PARTIALLY CLEARED, DRAFT OF THE HUMAN RIGHTS OBSERVANCE ON INDIA, TRANSMITTED BELOW, ARE NEEDED URGENTLY BY COB WASHINGTON SEPTEMBER 30 LATEST, TO ALLOW TIME FOR COMPLETION OF THE CLEARANCE PROCESS, TYPING AND SUBMISSION TO CONGRESS BY THE DEADLINE INDICATED.

3. TEXT OF DRAFT HUMAN RIGHTS REPORT FOR INDIA FOLLOWS.
QUOTE:

4. I. POLITICAL SITUATION. THE INDIAN POLITICAL SCENE HAS BEEN DOMINATED SINCE INDEPENDENCE IN 1947 BY THE CONGRESS PARTY. WITH THE EXCEPTION OF ONE SHORT INTERVAL (1965-66), THE PARTY HAS, IN TURN BEEN DOMINATED BY THE NEHRU FAMILY, JAWAHARLAL NEHRU, PRIME MINISTER 1947-64, AND HIS DAUGHTER MRS. INDIRA GANDHI, PRIME MINISTER SINCE 1966.

----- THE CONGRESS PARTY HAS HELD A MAJORITY IN PARLIAMENT THROUGHOUT THE PERIOD. IN JUNE 1975, THE PRESIDENT OF INDIA, ACTING ON THE ADVICE OF THE PRIME MINISTER, INVOKED ARTICLE 352 OF THE CONSTITUTION AND DECLARED A NATIONAL EMERGENCY ON THE GROUND THAT THE SECURITY OF INDIA WAS THREATENED BY AN INTERNAL DISTURBANCE.

5. THE PRIME MINISTER HAS STATED THAT THE EMERGENCY IS A TEMPORARY MEASURE, BUT NO DATE HAS YET BEEN GIVEN FOR ITS END. IN THE MEANTIME, NATIONAL ELECTIONS HAVE BEEN POST-CONFIDENTIAL

CONFIDENTIAL

PAGE 03 STATE 240807

PONED, THOUSANDS OF OPPOSITION POLITICIANS HAVE BEEN JAILED UNDER PREVENTIVE DETENTION STATUTES, THE PRESS OPERATES UNDER HEAVY CENSORSHIP, AND INDICATIONS ARE THAT INDIA'S HERETOFORE INDEPENDENT JUDICIARY WILL HAVE ITS INDEPENDENCE CIRCUMSCRIBED. MRS. GANDHI HAS RETAINED FIRM CONTROL OVER THE NATION AND THE CONGRESS PARTY.

6. II. LEGAL SITUATION. THE INDIAN CONSTITUTION CON-

TAINS PROVISIONS GUARANTEEING FUNDAMENTAL INTERNATIONALLY RECOGNIZED HUMAN RIGHTS. ARTICLES 14 AND 15 GUARANTEE EQUALITY BEFORE THE LAW AND OUTLAW DISCRIMINATION. ARTICLE 19 AMOUNTS TO A BILL OF RIGHTS. OTHER PROVISIONS PROVIDE FOR DUE PROCESS AND CONTAIN PROTECTION AGAINST ARBITRARY ARREST AND DETENTION, ALTHOUGH THERE ARE CERTAIN LEGAL EXCEPTIONS TO THESE PROVISIONS WHICH PERMIT PREVENTIVE DETENTION. THE CONSTITUTION ALSO EMPOWERS THE PRESIDENT TO PROCLAIM A STATE OF EMERGENCY IF THE SECURITY OF INDIA IS THREATENED FROM WITHOUT OR WITHIN.

7. THE NATIONAL EMERGENCY DECLARED BY THE PRESIDENT IN JUNE 1975 AND SINCE EXTENDED BY PARLIAMENT HAS ENABLED THE GOVERNMENT OF INDIA TO ISSUE A NUMBER OF DECREES AFFECTING BASIC LIBERTIES. IN ACCORDANCE WITH THE CONSTITUTION, THESE DECREES HAVE SUBSEQUENTLY BEEN APPROVED BY THE PARLIAMENT.

8. III. OBSERVANCE OF INTERNATIONALLY RECOGNIZED HUMAN RIGHTS. A. INTEGRITY OF THE PERSON. ARTICLE 3: UNDER THE EMERGENCY, LIBERTY AND SECURITY OF PERSON ARE NOT IMMUNE FROM ARBITRARY GOVERNMENT ACTION. HOWEVER, NO EMERGENCY PROCEDURES BEYOND THOSE ALREADY EXISTING IN ORDINARY LAW HAVE BEEN SET UP TO INFLICT CAPITAL PUNISHMENT ON PERSONS. ARTICLE 5: THERE HAVE BEEN SOME ALLEGATIONS OF TORTURE AND BEATINGS IN INDIAN PRISONS SINCE THE IMPOSITION OF THE EMERGENCY BUT THEY HAVE NOT BEEN CONFIRMED. INDIAN OFFICIALS HAVE FROM TIME TO TIME SAID THAT ANY OFFICIALS GUILTY OF TORTURE WOULD BE PUNISHED. BECAUSE OF THE NUMBERS OF THOSE ARRESTED, SOME INSTANCES OF MISTREATMENT BY OVERZEALOUS OFFICIALS PROBABLY HAVE OCCURRED. HOWEVER, WE HAVE NO BASIS FOR ASSESSING HOW WIDESPREAD THIS IS. WE HAVE NO INDICATION IT IS AN OFFICIALLY SANCTIONED
CONFIDENTIAL

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PAGE 04 STATE 240807

PRACTICE. ARTICLE 8: EXCEPT FOR PERSON HELD UNDER PREVENTIVE DETENTION STATUTES OF THE STATE OF EMERGENCY, INDIAN CITIZENS HAVE ACCESS TO THE COURTS FOR REDRESS OF VIOLATIONS OF THEIR RIGHTS. ARTICLE 9: ACTING UNDER THE PROVISIONS OF THE EMERGENCY PROCLAMATION AND UNDER PREEXISTING LAWS AUTHORIZED BY THE CONSTITUTION, THE INDIAN GOVERNMENT HAS ENGAGED IN LARGE-SCALE ARRESTS OF POLITICAL FIGURES, ALLEGED ECONOMIC OFFENDERS, AND PERSONS LOOSELY TERMED "BAD CHARACTERS". NO REASON FOR SUCH AN ARREST NEED BE GIVEN, AND IT NEED NOT BE PUBLICLY ANNOUNCED. THE INDIAN GOVERNMENT DOES NOT PROVIDE OFFICIAL FIGURES ON THE NUMBER OF PERSONS DETAINED IN CONNECTION WITH THE EMERGENCY. UNOFFICIAL ESTIMATES OF THE NUMBER OF PERSONS STILL BEING HELD RANGE UPWARD FROM 12,000 OR SO. THAT FIGURE IS BASED ON A STATEMENT BY THE INDIAN HOME MINISTER

JUNE 20 THAT THOSE STILL UNDER DETENTION NUMBER "HARDLY TWO FOR EVERY ONE HUNDRED THOUSAND OF POPULATION"(ESTIMATED AT 600 MILLION) THE TOTAL NUMBER OF DETAINEES, THAT IS, THOSE HELD FOR POLITICAL, ECONOMIC AND OTHER REASONS CONNECTED WITH THE EMERGENCY, MAY RUN BETWEEN 50,000 AND 80,000. SOMEWHAT UNDER 20,000 OF THOSE MAY FALL WITHIN THE POLITICAL CATEGORY.

9. ARTICLE 10: INDIAN CITIZENS MAY PETITION THE COURTS FOR A FAIR HEARING ON MATTERS INVOLVING HUMAN RIGHTS, WITH THE EXCEPTION OF PERSONS HELD UNDER PREVENTIVE DETENTION STATUTES. ARTICLE 11: BY AND LARGE DESPITE THE EMERGENCY

THE INDIAN COURTS HAVE RETAINED THEIR TRADITIONAL INDEPENDENCE. IT IS POSSIBLE TO RECEIVE A FAIR TRIAL OR HEARING IN AN INDIAN COURT. HOWEVER, FOR THE LARGE NUMBER OF PERSONS NOW BEING HELD UNDER PREVENTIVE DETENTION STATUTES THE FAIRNESS OF TRIALS IS NOT GERMANE SINCE IN PRACTICE THEY DO NOT HAVE ACCESS TO THE COURTS.

10. OTHER IMPORTANT FREEDOMS. THE GOVERNMENT'S LONG-STANDING POLICY TO ELIMINATE DISCRIMINATION ON GROUNDS OF RELIGION, RACE, CASTE, SEX OR PLACE OF BIRTH, WHICH IS PROHIBITED IN THE CONSTITUTION, HAS NOT BEEN AFFECTED BY THE EMERGENCY. NO GENERAL RESTRICTIONS HAVE BEEN IMPOSED ON THE FREEDOM OF MOVEMENT UNDER THE EMERGENCY, ALTHOUGH CONFIDENTIAL

CONFIDENTIAL

PAGE 05 STATE 240807

THE PASSPORTS OF POLITICAL FIGURES AND ALLEGED ECONOMIC OFFENDERS HAVE BEEN SELECTIVELY IMPOUNDED. THE RIGHT TO PROPERTY HAS BEEN LARGELY UNAFFECTED BY THE EMERGENCY ALTHOUGH PROPERTIES ALLEGED TO HAVE BEEN OBTAINED ILLEGALLY HAVE BEEN CONFISCATED.

11. FREEDOMS OF THOUGHT AND RELIGION HAVE BY AND LARGE NOT BEEN AFFECTED BY THE EMERGENCY EXCEPT THAT A NUMBER OF POLITICAL ORGANIZATIONS WERE OUTLAWED ON THE GROUNDS THAT THEIR ACTIVITIES HAD JEOPARDIZED PUBLIC ORDER AND SECURITY. THE FREEDOMS OF EXPRESSION AND OPINION HAVE BEEN CURTAILED UNDER THE EMERGENCY. CENSORSHIP HAS SIGNIFICANTLY CURTAILED FREE EXPRESSION IN THE PRESS AND A NUMBER OF NEWSPAPERS HAVE BEEN CLOSED DOWN. SEVERAL FOREIGN JOURNALISTS WERE EXPELLED EARLY IN THE EMERGENCY FOR VIOLATING CENSORSHIP REGULATIONS. BY A RECENT GOVERNMENT DECISION, FOREIGN JOURNALISTS ARE NO LONGER SUBJECT TO THESE REGULATIONS.

12. THE RIGHT OF PEACEFUL POLITICAL ASSEMBLY HAS BEEN SEVERELY RESTRICTED SINCE THE EMERGENCY WAS DECLARED AND FEW MEETINGS OF OPPOSITION GROUPS HAVE TAKEN PLACE DURING THE EMERGENCY.

13. OTHER HUMAN RIGHTS REPORTING. AMNESTY INTERNATIONAL'S 1974-75 ANNUAL REPORT FOCUSED ON THE TREATMENT AND DETENTION CONDITIONS OF PRISONERS IN WEST BENGAL. CONCERN WAS EXPRESSED, OTHERWISE, OVER THE CONTINUATION OF PREVENTIVE DETENTION LAWS IN FORCE SINCE THE DECLARATION OF A STATE OF EMERGENCY IN 1971. AMNESTY'S 1974 REPORT ON TORTURE INCLUDED ALLEGATIONS OF TORTURE AGAINST WEST BENGAL NAXALITIES. THE REPORTS ALSO CONTAINED ALLEGATIONS OF MISTREATMENT OF CIVIL DETAINEES IN NAGALAND AND KASHMIR.

14. FREEDOM HOUSE CATEGORIZED INDIA AS A "PARTLY FREE" COUNTRY. UNQUOTE. KISSINGER

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